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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	In Equity No. C-125
	)	CV-N-73-125-ECR(RAM)
Plaintiff,	)	
	)	
WALKER RIVER PAIUTE TRIBE,	)	
	)	<b>MINERAL COUNTY'S PRELIMINARY</b>
Plaintiff-Intervenor,	)	<b>LEGAL THEORIES</b>
vs.	)	
	)	
WALKER RIVER IRRIGATION DISTRICT,	)	
a corporation, et al.,	)	
	)	
Defendants.	)	

Pursuant to the Court's August 20, 2007, Order, Mineral County submits the following preliminary legal theories. This filing is intended to assist the parties in identifying threshold issues and is not all-inclusive or dispositive of Mineral County's legal positions or arguments.

1 Accordingly, Mineral County reserves the right to change these theories or to assert additional or  
 2 different legal theories during the pendency of this case.

3 **1. The Public Trust Doctrine:**

4 Mineral County maintains that the public trust doctrine requires that the waters of the  
 5 Walker River Basin be allocated and managed in such a manner as to ensure that sufficient flows  
 6 reach Walker Lake to protect the Lake's navigability, fisheries, other wildlife, recreation uses,  
 7 and its environmental, scenic and historic values before any water in the Basin can be  
 8 appropriated for other uses. *See Illinois Central R. Co. v. State of Illinois*, 146 U.S. 387, 452-456  
 9 (1892); *Mineral County v. Nevada*, 20 P.3d 800, 808 (Nev. 2001) (Rose, J., concurring); *In re*  
 10 *Water Use Permit Applications*, 94 Hawaii 97, 133, 9 P.3d 409, 445 (2000); *National Audubon*  
 11 *Society v. Superior Court of Alpine County*, 33 Cal. 3d 419, 433-448, 658 P.2d 709, 718-729,  
 12 *cert. denied*, 464 U.S. 977 (1983); *Pyramid Lake Paiute Tribe of Indians v. Washoe County*, 112  
 13 Nev. 743, 748, 918 P.2d 697, 700 (1996); *Kootenai Environmental Alliance v. Panhandle Yacht*  
 14 *Club*, 105 Idaho 622, 632, 671 P.2d 1085, 1095 (1983). *See also* Nev. Rev. Stat. § 533.025;  
 15 Nev. Rev. Stat. § 533.370(5); Nev. Rev. Stat. § 534.020(1).

16 The severe deficiency of inflows to Walker Lake over the past several decades has  
 17 dramatically reduced the Lake's level and water quality. This strangling of Walker Lake has  
 18 devastated the Lake's Lahontan cutthroat trout and tui chub fisheries and the local economy of  
 19 Mineral County, which is largely dependent on the environmental, scenic, historic and  
 20 recreational uses for which Walker Lake is famous, such as fishing, bird watching, boating, and  
 21 swimming. The deficiency of water flowing into Walker Lake due to the over-appropriation of  
 22 water in the Walker River Basin has gravely damaged, and continues to damage, the Lake's  
 23 ecosystem and the communities that are dependent on the Lake. The public trust doctrine  
 24 requires that the allocation and management of water rights in the Basin be modified in a manner  
 25 sufficient to reverse the ecological and economic damage done by the insufficiency of water  
 26 flowing into Walker Lake over the past several decades.

2. The Relationship between the Tribe's Claims and Public Trust Obligations:

Mineral County believes that the Walker River Paiute Tribe (the "Tribe") and the United States have asserted valid reserved water rights claims on behalf of the Tribe under existing decisional law. *E.g.*, *Winters v. United States*, 207 U.S. 564 (1908); *Arizona v. California*, 373 U.S. 546 (1963), *decree entered*, 376 U.S. 340 (1964); *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9<sup>th</sup> Cir.), *cert. denied*, 454 U.S. 1092 (1981); *In re General Adjudication of All Rights to Use Water in the Gila River System and Source*, 989 P.2d 739 (Ariz. 1999).

Mineral County maintains that the public trust obligations concerning Walker Lake and the Tribe's reserved water rights claims do not conflict with each other. Both can be satisfied through the appropriate modification of the Walker River Decree and re-allocation of non-Decree water rights in the Basin.

Dated: December 28, 2007

Respectfully submitted,

ADVOCATES FOR COMMUNITY  
AND ENVIRONMENT

By /s/ Simeon M. Herskovits  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of December, 2007, I electronically filed the foregoing Mineral County's Preliminary Legal Theories with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following via their email addresses:

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and I further certify that I served a copy of the foregoing Mineral County's Preliminary Legal Theories on the following non-CM/ECF participants by U.S Mail, postage prepaid, this 28<sup>th</sup> day of December, 2007:

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